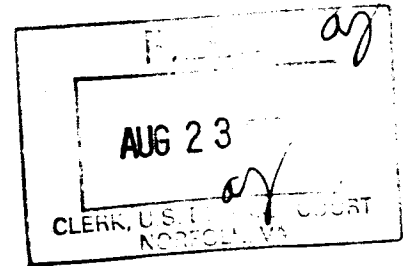


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION



YASER ESAM HAMDI,

ESAM FOUAD HAMDI, As Next  
Friend of Yaser Esam Hamdi,

Petitioners,

v.

CASE NO. 2:02CV439

DONALD RUMSFELD  
Secretary of Defense

COMMANDER W.R. PAULETTE,  
Norfolk Naval Brig

Respondents.

**PETITIONER'S RESPONSE TO FRIENDS OF IMMIGRATION LAW  
ENFORCEMENT'S MOTION TO INTERVENE**

A non-profit organization, Friends of Immigration Law Enforcement, has requested permission to intervene as a party respondent pursuant to Federal Rule of Civil Procedure 24(b). The Court should deny this request.<sup>1</sup>

Federal Rule of Civil Procedure 24(b) provides:

Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

<sup>1</sup> The Motion to Intervene indicates that Movant seeks to intervene in Case Number 2:02cv348. Given the posture of that case, Movant likely intended to seek intervention in this matter. *See Hamdi v. Rumsfeld*, 294 F.3d 598 (4th Cir. 2002).

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Fed. R. Civ. P. 24(b). “When a party seeks permissive intervention, as here, he must generally establish independent jurisdictional grounds to support his claim or defense.” *Francis v. Chamber of Commerce*, 481 F.2d 192, 195 n.6 (4th Cir. 1973).

Movant seeks to challenge the proposition that citizenship is afforded to persons born within the United States. Movant makes no effort to establish a jurisdictional basis to assert this claim in this proceeding, and cannot establish jurisdiction because Movant does not have custody of Petitioner Hamdi.

In addition, Movant’s request raises a substantial risk of delay. Indeed, “[s]hould the interests expressed by the proposed intervenor[] be found sufficient to allow intervention, the door would indeed be open wide for all who wish to express an opinion” regarding the issues in this case. *Piedmont Heights Civic Club v. Moreland*, 83 F.R.D. 153, 158 (N.D. Ga. 1979).

Finally, there is no need to permit intervention when the movant can express its views by way of an amicus brief or in another lawsuit. *Cf. Koriath v. Briscoe*, 523 F.2d 1271, 1279 n.25 (5th Cir. 1975) (“When an appellant has other adequate means of asserting its rights, a charge of abuse of discretion in the denial of a motion for permissive intervention would appear to be almost untenable on its face”). “The permissive nature of such intervention necessarily implies that, if intervention is denied, the applicant is not legally bound or prejudiced by any judgment that might be entered in the case. He is at liberty to assert and protect his interests in some more appropriate proceeding.” *Brotherhood of R. R. Trainmen v. Baltimore & O. R. Co.*, 331 U.S. 519, 524 (1947).

For these reasons, Petitioner Hamdi respectfully requests that the Court deny Movant’s Motion to Intervene.

Respectfully submitted,

FRANK W. DUNHAM  
Federal Public Defender

By:   
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Jeremy C. Kamens

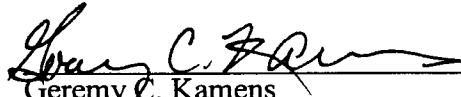
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**CERTIFICATE OF SERVICE**

I certify that on this 23rd day of August, 2002, a copy of the foregoing was sent via first-class mail to: Lawrence R. Leonard, Managing Assistant United States Attorney, at the Office of the United States Attorney, Eastern District of Virginia, Norfolk Division, World Trade Center, 101 W. Main, Suite 8000, Norfolk, VA 23510, and Craig Nelson, Director, Friends of Immigration Law Enforcement, P.O. Box 8122, Omaha, Nebraska, 68108-0122.

  
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Jeremy C. Kamens  
Assistant Federal Public Defender